

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA


DONALD E. PHILIPPI, JR.,)	
)	
Petitioner,)	3:11-cv-00447-HDM-VPC
)	
vs.)	
)	ORDER
WARDEN PALMER, <i>et al.</i> ,)	
)	
Respondents.)	

This is an action on a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which petitioner, a state prisoner, is proceeding *pro se*. The Court previously determined that the petition contained unexhausted, conclusory or not cognizable grounds for relief and dismissed the noncognizable and conclusory grounds from the petition (ECF No. 31). The Court found that a single ground (ground 1(g)) was exhausted and proper for review, but afforded petitioner the opportunity to show good cause for why he failed to exhaust his state court remedies as to the other claims. Petitioner's motion for stay was denied because he failed to make a sufficient showing of good cause under *Rhines v. Weber*, 544 U.S. 269 (2005) (ECF No. 41). Before the Court now is petitioner's Response to the Court's Order of October 3, 2012, in which petitioner indicates that he will not abandon his claims for relief (ECF No. 42).

Because the Court cannot grant relief as to any unexhausted claims and cannot entertain a petition which contains exhausted and unexhausted claims, *see Rose v. Lundy*, 455 U.S. 509, 521-22 (1982); *Szeto v. Rusen*, 709 F.2d 1340, 1341 (9th Cir.1983), the petition shall be dismissed without prejudice.

1 **IT IS THEREFORE ORDERED** that the petition for writ of habeas corpus pursuant
2 to 28 U.S.C. § 2254 (ECF No. 4) is **DISMISSED WITHOUT PREJUDICE** and **this case shall be**
3 **CLOSED.** The Clerk shall enter judgment accordingly.

4 Dated this 15th day of November, 2012.

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9 UNITED STATES DISTRICT JUDGE
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